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I. INTRODUCTION

The Medical Claims Conciliation Panel (“MCCP”) and the Design Professional Conciliation Panel (“DPCP”), are programs of the Department of Commerce and Consumer Affairs (“DCCA”), State of Hawai‘i. The MCCP was established by Act 219, 1976 Session Laws of Hawai‘i, Hawai‘i Revised Statutes (“HRS”) §671-11, and the DPCP was established by Act 228, 1981 Session Laws of Hawai‘i, HRS Chapter 672.

The MCCP and DPCP programs are responsible for conducting informal conciliation hearings on claims against health care providers and design professionals, respectively, before such claims can be filed as lawsuits. The Panels’ decisions are advisory in nature and are not binding on the parties, in the event that any party still wishes to pursue the matter via the courts.

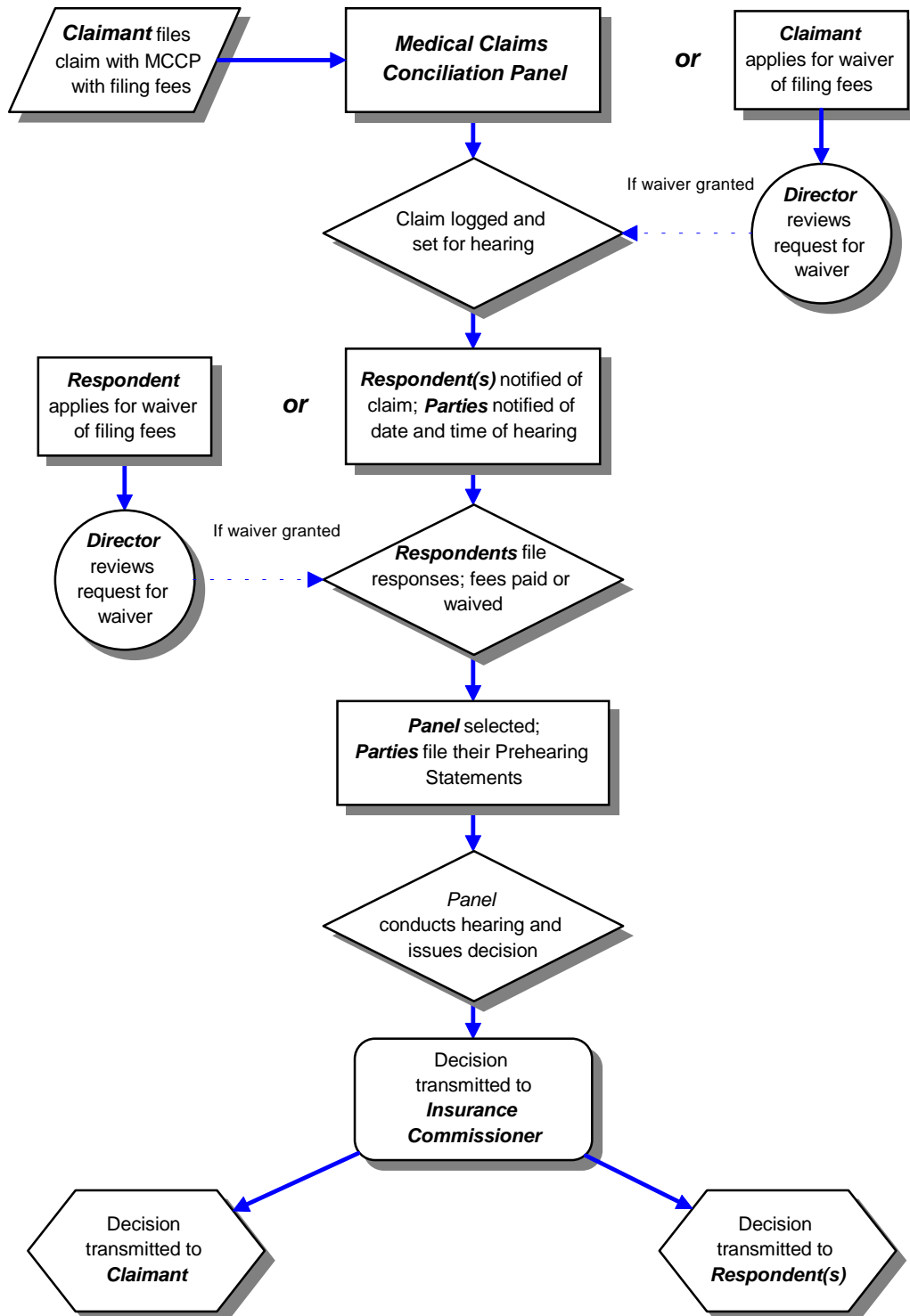
The primary purpose of the MCCP and DPCP programs is achieved when the parties make conscientious and thorough presentations to the Panels. In such cases, the decisions rendered by the Panels provide the parties with fairly accurate advisory determinations of the relative merits of the claims, which should assist the parties in evaluating whether the claims should be pursued through the judicial system.

The MCCP and DPCP programs also provide opportunities for the parties to exchange information in a relatively expedited and inexpensive manner, which in turn provides for opportunities for the parties to explore the conciliation of meritorious claims prior to such claims being brought before the courts.

Lastly, the requirements of exchanging information between the parties, and making conscientious and thorough presentations to the Panels, discourage the pursuit of frivolous or fraudulent claims, prior to further legal proceedings being taken by the parties.

The ***MCCP and DPCP Annual Report to the 2002 Legislature*** covers the period of January 1, 2001, through December 31, 2001.

Flowchart of the MCCP Process



II. THE MEDICAL CLAIMS CONCILIATION PANEL PROGRAM

A. The Year in Review

In 2001, we continued to improve the processing and hearing of MCCP claims, as well as streamlining the MCCP procedures to minimize unnecessary costs and procedural requirements.

We also updated all of the MCCP informational materials and forms and made them available to parties and interested persons in various formats and media, including access via DCCA's internet web page: www.state.hi.us/dcca/oah.

B. The Operations of the MCCP

1. Expedited Claims Filing Process

In 1997, the MCCP program initiated the MCCP Fast Track Filing System, which allowed a claim to be heard within four (4) months from the date the claim is filed with the MCCP program, or even sooner, if all of the parties agree. Additionally, because these expedited cases utilized other facilities to host the hearings, we have been able to schedule more hearings for claims brought under the regular MCCP filing process, because of the increased availability of the MCCP hearings room.

The MCCP Fast Track Filing System continues to be utilized by the parties. In 2001, six (6) new claims were filed utilizing the expedited claims process, and eleven (11) claims were heard on an expedited basis.

2. Requests to Appoint Specific Panel Chairpersons

In order to allow the parties themselves to become involved in the selection of a Panel chairperson for a particular case, in 1998, we implemented a new procedure whereby the parties can submit a written request to the Director of DCCA to have a specific eligible Panel chairperson appointed to serve as the Panel chairperson for a particular case.

If the parties express a desire to use this process, a list of eligible Panel chairpersons is provided to the parties. The parties can

then select an eligible Panel chairperson that is agreeable to all parties. Once the parties agree, then they submit their written request to the Director of DCCA.

In most cases, the Panel chairperson requested by the parties will be appointed by the Director; however it is made clear to the parties that their request to the Director is a request and that the appointment of the chairperson continues to be a function of the Director.

In 2001, the parties in several cases elected to utilize this process to request the appointment of specific Panel chairpersons, and we anticipate a greater utilization in future.

3. Orientation for MCCP Chairpersons

In 2000, the MCCP program started a comprehensive evaluation of the entire MCCP process, specifically from the perspectives of the Panel members and the parties in MCCP claims.

The areas covered by the evaluation program included: 1) the administrative support provided by the MCCP from the perspectives of the Panels and the parties; 2) the performance of the Panel members from the perspectives of the parties; and 3) the performance of the parties from the perspectives of the Panels.

Consequently, in the fall of 2001, the MCCP program conducted mandatory orientation sessions for all MCCP chairpersons, in order to ensure that all MCCP chairpersons: 1) clearly understood their responsibilities regarding the MCCP process and the overall performance of each Panel; 2) were consistent in fulfilling their Panel responsibilities in a fair and impartial manner; and 3) were aware that the ability of each Panel member to continue to serve on the MCCP was dependent on the Panel members receiving acceptable evaluations from the parties.

4. MCCP Evaluation Process

As a result of the evaluations collected for calendar year 2001, we have been able to identify areas of the MCCP process that are functioning appropriately, as well as identifying areas that need additional support.

Overall, every Panel member received acceptable levels of evaluations, and some Panel members consistently received “good” to “excellent” on their evaluations from the parties.

Additionally, the MCCP process as well as the MCCP staff received evaluations indicating that the parties found the MCCP process/staff to be more than adequate, with some areas ranking higher.

5. Appointment of MCCP Chairpersons

In the past, the substantial majority of the MCCP chairpersons have been attorneys; however, starting in 2000, we have also sought qualified chairpersons who are not attorneys.¹

In 2001, there were six qualified MCCP chairpersons who were not attorneys: two individuals with extensive mediation and dispute resolution experience, and four physicians who have previously served on Panels as physician members, and who have distinguished themselves by their medical expertise and their understanding of the MCCP process.

6. Electronic Filing of Documents

In latter part of 2001, the MCCP program inaugurated an optional electronic filing process that allows participating parties to file, distribute, and receive documents electronically.

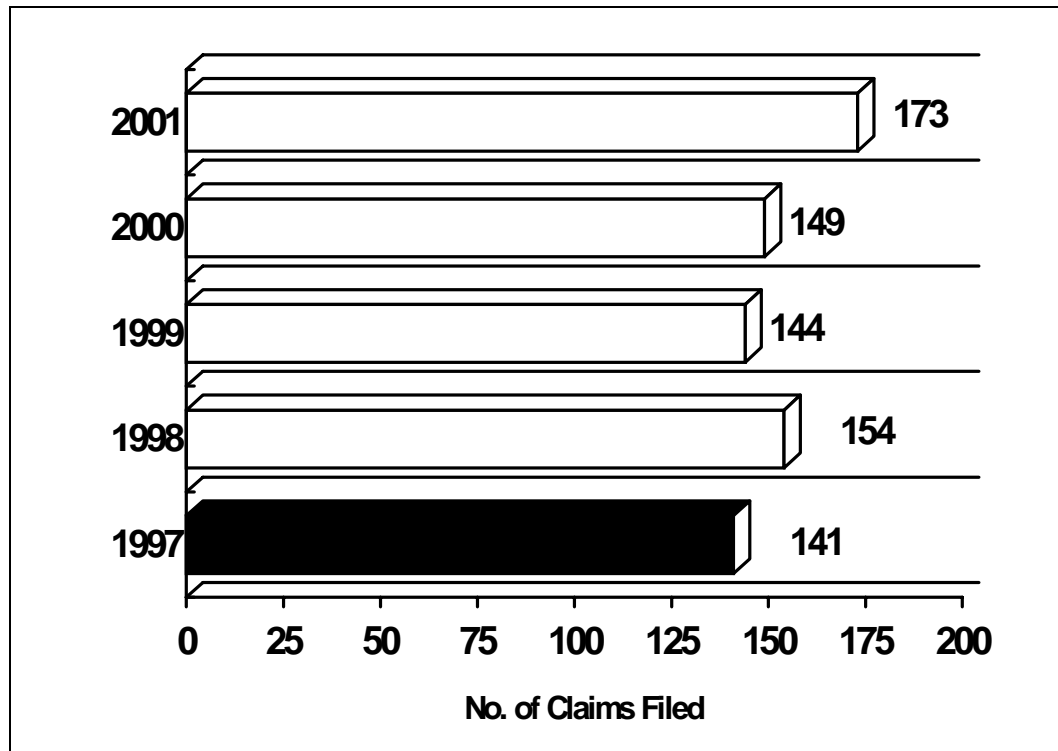
We expect that technologically capable parties will be utilizing this electronic filing option more frequently in the future.

C. Statistical Overview of the MCCP Program

1. Number of Claims Filed in 2001

In 2001, there were 173 cases filed with the MCCP program, involving 352 claimants, and 208 respondents. It should be noted that although there were 352 different claimants, **there were not 208 different** health care professionals and facilities named as Respondents. However, each case requires the same individualized processing effort, even if some of the cases involve some or all of the same respondents.

¹ HRS §671-11(b), requires that the MCCP chairperson be “familiar with and experienced in the personal injury claims settlement process.”

Figure 1: Claims Filed in 1997 Through December 31, 2001

In regards to parties who are unable to pay the required filing fees, in 2001, 58 individuals requested filing fee waivers, and of the 58 requests, 52 waiver requests were granted by the Director.²

Lastly, in 2001, 61 claimants that were not represented by attorney, filed claims with the MCCP.

2. Disposition of Claims Heard in 2001

In 2001, there were 99 cases heard by the MCCP, involving a total of 195 claimants and 337 respondents. Once again, it should be pointed out that although these statistics indicate that 195 different claimants were involved in the claims heard, there were not 337 different health care professionals or facilities involved.

Of the cases heard by the MCCP in 2001: 1) there were 21 cases in which the claimants were not represented by attorneys (*pro se* claimants); 2) none of the 99 claims heard by the MCCP were

² The requests to waive the filing fees were denied because the claimants had the financial ability to pay the required filing fees. The MCCP utilizes the same financial guidelines to determine a party's eligibility to waive the MCCP filing fees, as the courts use in determining whether a party can proceed *in forma pauperis* in a judicial proceeding.

found to be frivolous (palpably without merit); and 3), in one case, the Panel found actionable negligence against some or all of the respondents, and awarded \$250,000.00 in damages to a pro se claimant.

Overall, the MCCP found actionable negligence on the part of all or some of the respondents in 15 cases, and rendered advisory determinations of damages ranging from \$4,000.00 to \$5,000,000.00.

The following table provides a statistical overview of the disposition of cases heard by the MCCP in 2001.

Figure 2: Disposition of Claims Heard in 2001

Total number of parties in cases heard:	532
Total number of Claimants	195
Total number of Respondents	337

Total number of hearings conducted:	99
Actionable negligence found:	6
Some Respondents negligent:	10
No negligence found:	81
Panel decision pending:	2
Further hearing required:	0
Total Damages Recommended by Panels:³	\$11,652,849.54

³ In seven (7) of the cases in which Panels found actionable negligence on the part of some of the respondents, the Panels were either not able to make determinations of damages, or were requested not to make determinations as to damages.

Figure 3: Comparative Disposition of Claims Heard in 2001

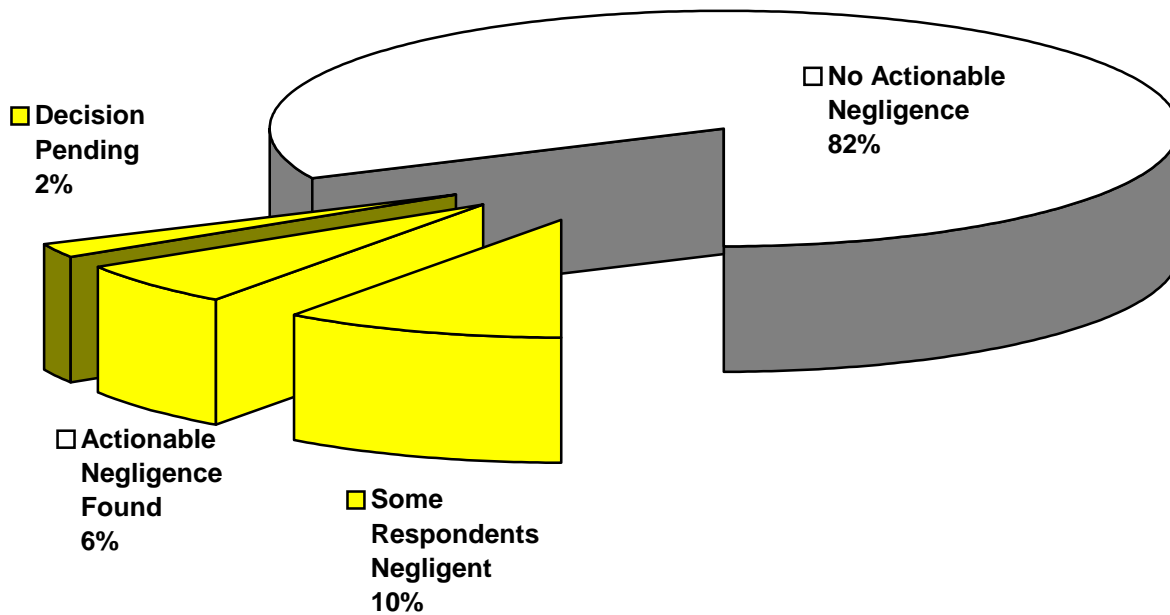


Figure 4: Disposition of Claims Closed Without Hearings

Total claims closed without hearings:	38
Total number of Claimants	47
Total number of Respondents	114
Withdrawn:	12
Settled prior to hearing:	6
Dismissed by Stipulation	4
Terminated	13
Tolling period lapsed	3

III. DPCP ANNUAL REPORT

A. Statistical Overview DPCP

There were 11 DPCP claims filed in 2001; however, none of the DPCP claims proceeded to hearing.

Figure 5: Disposition of DPCP Claims

Total claims filed in 2001:	11
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Total number of hearings conducted:	0
Actionable negligence found	0
Some Respondents negligent	0
No negligence found	0
Total Damages Recommended by Panel	N/A

Disposition of claims in 2001:	
Withdrawn/dismissed	1
Settled	0
Unsuitable	5
Tolling period lapsed	1
Pending	3

IV. CONCLUSION

We are continuing to work with the parties and participants of the MCCP and DPCP programs to find new ways to allow these programs to fulfill their statutory and philosophical obligations.

We are also very committed to modernizing every appropriate component of the MCCP and DPCP processes to allow for maximum access by the parties and the expedited processing of claims. Look for a major update of the MCCP web page in the early part of 2002.

Respectfully submitted,

KATHRYN S. MATAYOSHI
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